

REMARKS

This Amendment is submitted in response to the Office Action dated November 26, 2003. In the Office Action, the Patent Office rejected Claims 1-6, 12-14, 21 and 22 under 35 U.S.C. §103(a) as being obvious over Ginn (U.S. Patent No. 6,059,802) in view of Yarger (U.S. Patent No. 5,360,414). Moreover, Applicant notes with appreciation that the Patent Office indicated that Claims 7-11, 15-20, 23 and 24 are allowable.

By the present amendment, Applicant amended Claims 1 and 12. Applicant submits that the amendment to Claims 1 and 12 overcomes the rejection by the Patent Office and places the application in condition for allowance. Applicant further submits that neither further search nor consideration is necessitated by entry of this Amendment. The amendment to Claims 1 and 12 merely clarify the limitations previously set forth and add a plurality of holes in the flexible hollow body and an impermeably notch to distinguish the catheter of Claim 12 from any of the art of record. Accordingly Applicant submits that this amendment places all claims of the application in condition for allowance

With respect to the rejection of Claims 1-6, 12-14, 21 and 22 under 35 U.S.C. §103(a) as being obvious over Ginn in view of Yarger, Applicant submits that this rejection has been overcome

by the amendment to Claims 1 and 12 and for the reasons that follow.

In the Office Action, the Patent Office asserts:

Ginn teaches a catheter introducer device comprising of a cylindrical body defining a cross with a length defined between a pointed end 26 and a flat end 30. A first part 24 and a second part 22, wherein the first and the second part defines the cylindrical body. Locking mechanism (figs 6-7) where the first part and the removable second part are locked together. The pointed end of the cylindrical body gradually tapers to the cylindrical portions. A recess portion 40 along the length of the first portion 22 and a protruding element 42 defined in shape by a right angle located along the recessed portion of the first part. The recess portion 40 may readily accept the protrusion 42 along the length of the removable second part. A first hole 78 located a distance from the pointed end of the cylinder. A leg 66 attached to the bottom end of the cylinder. A second hole 70 located on the leg of the cylinder and a thread connected (locking mechanism) 80 and 74 to the cylinder form the second hole to the first hole. A groove or plurality of holes 38 cut into the cylinder. Ginn does not teach a catheter with two notches located a distance from each other.

Yarger teaches a catheter (tube) with two notches 28a a distance from each other with a locking mechanism 24 located on the bottom end of the flexible body. The tube also comprises of multiple holes 28b.

Therefore it would have been obvious to one having ordinary skill in the art to have used the catheter introducer of Ginn for the introduction of a catheter or tube such as Yarger, because it is well known in the art that any tube or catheter needs an introducer for guidance and maneuvering into the body.

However, independent Claim 1, as amended, requires a catheter assembly having a cylindrical body which has a length defined between a first end and a second end wherein the

cylindrical body is formed by a first part and a second part. Further, Claim 1 requires that the first part has a length defined between the first end and the second end wherein the first part has a uniform width between the first end and the second end. Still further, Claim 1 requires that the second part forms a cross at a distance from the second end wherein the first part is removably attached to the second part. Moreover, Claim 1 requires that the top end of the flexible hollow body is removably attached to the second part of the cylindrical body.

Independent Claim 12, as amended, requires a catheter for infusing a local anesthetic having a flexible hollow body which has a plurality of holes defining passageways from inside of the flexible hollow body to points exterior to the flexible hollow body. Moreover, Claim 12 requires a notch located on the flexible hollow body at a distance between the pointed end and the plurality of holes wherein the notch is empereable.

Contrary to the assertions of the Patent Office, *Ginn* merely teaches a slat assembly for harvesting vascular conduits or vessels. The slat assembly taught by *Ginn* requires two arcuate slats which are laterally translatable relative to each other. The two slats have similar cross-sections across their width dimensions. To enable the lateral translation of the assembly, a series of slots is formed in one of the slats, and a

corresponding series of pins is secured to the other slat with each pin being slidably contained by a corresponding slot. Moreover, Ginn teaches a corresponding series of pins having heads of a selected type and diameter and are molded, screwed into, or otherwise securely fastened to the lower slat. (See Ginn, col. 6, lines 13-16.) Furthermore, Ginn teaches "to vary the width dimension of the slide assembly, the upper slat is provided with a series of spaced, identical slots which, in this embodiment, extend diagonally at a selected angle across a major portion of the slat's width." (See Ginn, col. 6, lines 5-8.)

Furthermore, Yarger merely teaches a suction tube for removing fluid from a body cavity, viscus or wound. The tube has an elongate tubular section with an exterior surface and an interior surface defining an internal longitudinal passageway. The tube has a proximal end portion designed to be connected to a suction source and a distal end portion designed to be inserted into a body cavity, viscus or wound. The tubular section includes a plurality of radially extending, circumferentially spaced elongated portions extending along the length of the tubular section. Further, Yarger merely teaches a plurality of spaced holes that extend transversely through the tubular body coupling the region surrounding the tubular body with the internal longitudinal passageway.

Clearly, neither Ginn nor Yarger, taken singly or in combination, teach or suggest a catheter assembly having a cylindrical body which is formed by a first part and a second part wherein the second part forms a cross at a distance from the second end and further wherein the first part is removably attached to the second part as required by Claim 1. Further, neither Ginn nor Yarger, taken singly or in combination, teach or suggest a catheter assembly having the top end of the flexible hollow body which is removably attached to the second part of the cylindrical body as required by Claim 1.

Neither Ginn nor Yarger, taken singly or in combination, teach or suggest a catheter having a plurality of holes defining passageways from inside of the flexible hollow body to points exterior to the flexible hollow body and a notch located on the flexible hollow body at a distance between the pointed end and the plurality of holes and further wherein the notch is impermeable as required by Claim 12. Clearly, nowhere does Ginn disclose a flexible hollow body which has a plurality of holes defining passageways from inside of the flexible hollow body to points exterior to the flexible hollow body and a notch located on the flexible hollow body at a distance from the pointed end and further wherein the notch is impermeable. Moreover, Yarger merely teaches that "tubular section 22 includes a plurality of

spaced apart transverse holes, generally designated as 28, coupling the hollow interior (longitudinal bore) 30 of the tubular section 22 with the region surrounding the tubular section."

Moreover, a person of ordinary skill in the art would never have been motivated to combine Ginn and Yarger in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). More specifically, Applicant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively defined limitations of Applicant's catheter assembly to deprecate the claimed invention. Of course, hindsight reconstruction of Applicant's invention is impermissible. Applicant respectfully submits that Claims 1 and 12 distinctly define the present invention from Ginn and Yarger, taken singly or in combination.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is

whether the invention as a whole, in light of all of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention, either separately or used in other combinations. A teaching, suggestion, or incentive must exist to make the combination made by Applicant. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

In view of the foregoing remarks and amendments, Applicant respectfully submits the rejection of Claims 1-6, 12-14, 21 and 22 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

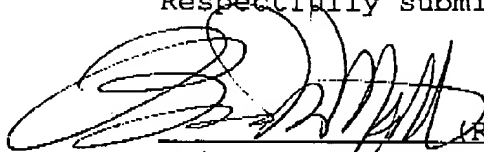
Further, Claims 2-6, 21 and 22 depend from independent Claim 1; and Claims 13 and 14 depend from independent Claim 12. These claims are also believed allowable over the references of record for the same reasons set forth with respect to their parent claims since each sets forth additional structural elements of Applicant's catheter assembly and catheter, respectively. Notice to that effect is requested.

In view of the foregoing remarks and amendments, Applicant

respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. Further, Applicant submits that neither further search nor consideration would be necessitated by entry of this Amendment; therefore, entry of this Amendment is proper and should be effected.

If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,




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CERTIFICATE OF TELEFAX TRANSMISSION

I hereby certify that this **Amendment after Final** and Transmittal letter is being transmitted to: Mail Stop AF, Commissioner for Patents via telefax (Fax No.: 703.872.9306) on March 22 2004.


Brian M. Mattson